

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE: DETENTION OF DAVID MCCUISTION

STATE OF WASHINGTON,	)	No. 81644-1
Respondent,	)	
	)	STATEMENT OF
v.	)	ADDITIONAL
	)	AUTHORITIES
DAVID MCCUISTION,	)	(RAP 10.8)
Petitioner.	)	

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BY RONALD R. CARPENTER

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Pursuant to RAP 10.8, Petitioner, David McCuiston, submits the following statement of additional authorities for the consideration of the Court in the above-captioned matter:

- I. Detainee's right to petition for annual review in other states with similar sexually violent predator commitment proceedings:

California: Cal. Welf. & Inst. Code § 6608 (committed individual may file petition for release under standard that he has "so changed so that hearing was warranted");

Florida: Spivey v. State, 12 So.3d 880 (2009) (discussing procedure set forth in F.S.A. § 394.918, right to release trial where detainee shows "probable cause to believe that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged.");

Statement of Additional  
Authorities

Washington Appellate Project  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
(206) 587-2711

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Iowa: I.S.A. § 229A.8(5)(e) (final release trial required if petitioner presents preponderance of evidence that he “has so changed” so he “is not likely to engage in predatory acts constituting sexually violent offenses if discharged” or is suitable for placement in a transitional release program);

Kansas: In re Miles, 213 P.3d 1077, 1081 (Kansas 2009) (court must hold release hearing if probable cause to believe “that the person’s mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release,” K.S.A. 2008 Supp. 59-29a08(c)(1); subsequent petitions for release reviewed by court for frivolousness);

Minnesota: Hince v. O’Keefe, 632 N.W.2d 577, 584-85 (Minn. 2001) (ruling sexual offender civil commitments have same right to review of continued confinement as other civil committees based on statutory scheme and constitutional requirements); In re Brown, 640 N.W.2d 919, 922-23 (Minn. 2002) (continued commitment premised on regular re-commitment trials where State bears burden of proof by preponderance, pursuant to M.S.A. § 253B.12); M.S.A. § 253B.185(9) (committed person may file for reduction in custody, right to same review procedures as available for other civilly committed individuals);

Missouri: Care and Treatment of Schottel v. State, 159 S.W.3d 836, 842 (Mo. 2005) (under V.A.M.S. § 632.498, court’s role at annual review is “gatekeeper,” deciding “whether ‘*probable cause exists to believe*’ that the person’s abnormality has so ‘changed’ that the person is safe to be at large and will not engage in acts of sexual violence—that is, will not commit sexually violent offenses-if released”) (emphasis in original));

New Jersey: N.J.S.A. 30:4-27.36 (annual review hearing required when petitioner alleges facts from which court could find “so changed” that not likely to engage in acts of sexual violence if released based on evidence not provided in last petition for release);

North Dakota: N.D.C.C. 25-03.3-18 (petitioner has right to hearing on discharge request every 12 months, burden on State to show clear and convincing evidence petitioner remains sexually dangerous individual);

Virginia: Va. Code Ann. § 37.2-910 (court "shall conduct" release hearing every year for first five years and biennially thereafter; at hearing, "burden of proof at the hearing shall be upon the Commonwealth to prove to the court by clear and convincing evidence that the respondent remains a sexually violent predator.").

Wisconsin: In re Commitment of Arends, 762 N.W.2d 422, 431 (Wis.App. 2008), rev. granted, 764 N.W.2d 531 (Wis. 2009) (court must order evidentiary hearing if petition for release "alleges facts from which a judge or jury *may conclude* that there is a *change* in the person's condition since the date of initial confinement so that the person no longer meets the commitment criteria" under Wis. Code § 980.09) (emphasis in original)).

II. Legal authority pertaining to avenues for challenging confinement:

In re Pers. Restraint of Turay, 150 Wn.2d 71, 80-85, 74 P.3d 1194 (2003) (concluding that under habeas corpus statute RCW 7.36.130, a person challenging commitment as a sexually violent predator must comply with limitations applied to personal restraint petitions, including the one-year time bar and the subject matter limits contained in RCW 10.73.100);

RCW 7.36.130 (providing in pertinent part that habeas petition must be filed "within the time allowed by RCW 10.73.090 and RCW 10.73.100.");

RCW 10.73.090 (providing that habeas petition challenging a final judgment must be made within one year of entry of judgment, applicable to civil cases by RCW 7.36.130);

RCW 10.73.100 (setting forth exceptions to time limit of RCW 10.73.090).

III. Legal authority pertaining to release procedures for people civilly committed after being found not guilty by reason of insanity in a criminal prosecution:

State v. Platt, 143 Wn.2d 242, 248, 251, 19 P.3d 412 (2001) (explaining right of person committed after being found not guilty by reason of insanity to petition for release, with a burden on the petitioner by a preponderance of evidence, and with the right to repeatedly request a release trial every year);

State v. Harris, 39 Wn.App. 460, 464, 693 P.2d 750, rev. denied, 103 Wn.2d 1030 (1985) (explaining that person committed after being found not guilty by reason of insanity cannot be committed for longer than the maximum possible penal sentence for the underlying offense);

RCW 10.77.200 (on-going right of person committed to jury trial on release where petitioner has burden to prove by preponderance of evidence that he "no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.");

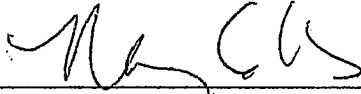
State v. Haney, 125 Wn.App. 118, 125, 104 P.3d. 136 (2005) (ruling person committed under RCW 10.77 may petition court for release without showing change in circumstances from last petition for release, although person may not file more than one request for release within one year);

State v. Kolocontronis, 34 Wn.App. 613, 622, rev. denied, 100 Wn.2d 1014 (1983) (finding person committed under RCW 10.77 may file one petition for release each year as means to discourage repeated, frivolous petitions, but one petition per year limit does not apply if person shows evidence of improved condition

since last request for release).

DATED this 16th day of October 2009.


Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nancy Collins', written over a horizontal line.

NANCY P. COLLINS (WSBA 28806)  
Washington Appellate Project-91052  
Attorneys for Petitioner

### DECLARATION OF DOCUMENT FILING AND MAILING/DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 81644-1**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to each attorney or party or record for ☒ **respondent Todd Bowers; Jeffrey Even – Office of the Attorney General**, ☐ **appellant** and/or ☐ **other party**, at the regular office or residence as listed on ACORDS, or drop-off box at the prosecutor's office.

  
MARIA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: October 16, 2009